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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,169	12/19/2000	David W. Perrego	417-001	6758

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EXAMINER

THANH, QUANG D

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/740,169

Applicant(s)

PERREGO, DAVID W.

Examiner

Quang D. Thanh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-15, drawn to a vertical traction assembly, classified in class 602, subclass 32.
 - II. Claims 16-19, drawn to a traction method for treating inflamed spinal area, classified in class 482, subclass 143.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process (group II) for using the product as claimed could be practiced with another materially different product that does not require the focused traction force means or the stand means as recited in group I.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Neil Markva on 4/30/2002 a provisional election was made with traverse to prosecute the invention of group I, claims 1-15.

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Affirmation of this election must be made by applicant in replying to this Office action.

Claims 16-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a) because they fail to show "legs 17" and "transverse base support elements 15" (p. 13, lines 28-29) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

5. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

6. The disclosure is objected to because of the following informalities: spelling error "wight" (p. 3, lines 22). Appropriate correction is required.

Claim Objections

7. Claim 13 is objected to because of the following informalities: spelling error (page 24, line 7) "assemble" should be – assembly --. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 4 and 15 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The applicant fails to disclose how the amount of focused traction pressure is derived to be equal to about 40% of a user's weight and how the focused traction pressure means would ensure to deliver the predetermined force (of about 40% weight) to the spine of a user.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Chitwood (5,662,597). Chitwood discloses a gravity traction assembly (fig. 1) comprising:

(a) frame means 14 and torso harness means 66 coupled to depend from the frame means,

(b) the torso means being effective to maintain a person in traction (fig. 2),

(d) focused traction force means 20 attached to the frame means for applying a predetermined amount of focused traction pressure directly to a selected location along a user's spine (fig. 1).

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11. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Burton (4,205,665). Burton discloses an apparatus (fig. 2) for spinal traction therapy utilizing the force of gravity. This apparatus has (a) frame means 54 and torso harness means 32, (b) stand means (foot stop 93) mounted to the frame including a non-traction receiving surface (upper platform 94) and a partial traction receiving surface (lower platform 93); (c) the harness 32 being effective to suspend a person for a partial traction pressure when the person stand on the lower platform 93 (fig. 2); and (inherently understood by the examiner) the partial traction pressure being less than a full traction pressure applied to a person who is in vertical gravity traction suspension position (90 degrees).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 7 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (4,890,604).

Re claims 1 and 10, Nelson discloses a gravity traction assembly (fig. 7) comprising: (a) free standing frame means 122, and (d) focused traction force means 147 adjustably (col. 6, lines 48-52) attached to the frame means for applying a predetermined amount of focused traction pressure directly to a selected location along

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a user's spine (best seen in fig. 7), except that it does not include torso harness means coupled to flexibly depend from the frame means. However, Nelson suggests that the assembly having torso harness means 43 coupled to flexibly depend from the frame means (fig. 1), the torso harness means being effective to maintain a person in gravity traction suspension position (fig. 2, col. 5, lines 40-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Nelson's apparatus, as suggested above, to include a torso harness means coupled to the frame means, for the purpose of securing the user relatively to the frame means (fig. 2, col. 5, lines 40-42).

14. Re claim 7, the assembly as defined in claim 1, wherein the frame means 122 is free standing and the harness means 43 depends downwardly from the frame means, the focused traction force means 147 being effective to derive the pressure from a portion of the weight of the person in the traction position, and the traction position is a gravity traction suspension position with the person being vertically suspended with the harness means to produce the focus traction pressure (fig. 2 and 7).

15. Re claims 11-14, an assembly as defined in claim 10, wherein (claim 11) the frame means 122 includes backboard means 144 (fig. 7) for supporting an upper body portion of the person girded with the harness means 43 and suspended in gravity traction suspension (fig. 2); (claim 12) the backboard means includes the focused traction force means 147 having releaseable tighten means 153 for selectively securing the focused traction force means to a plurality of vertical locations along the backboard means (fig. 7, col. 6, lines 50-58); (claim 13) the frame means 122 includes a front

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rearwardly tilted frame portion including backboard means 144 (fig. 2 and 7) and the focused traction force means 147 includes pad element means 15 (fig. 8, col. 6, lines 52-54) adjustably mounted to the backboard means and releaseable tighten means 153 for selectively positioning the pad with respect to the user to undergo traction treatment; and (claim 14) the focus traction force means is effective to direct a traction force equal to a fraction of the person's weight at the selected location along the spine (col. 1, lines 48-52).

16. Claims 2-6, 8, and 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Burton.

Re claim 2, Nelson discloses a traction assembly having all the features as claimed, except that it does not have a stand means disposed on the frame means. However, Burton teaches an apparatus for spinal traction therapy utilizing the force of gravity. This apparatus has a foot stop 93 (fig. 5) comprising an upper platform 94 and a lower platform 96 as a safety device to help protect the user from falling if one of the support elements fails (fig. 5, col. 5, lines 35-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Nelson's apparatus, as suggested by Burton, to include a stand means with two platforms, for the purpose of providing a safety device to help protect the user from falling if one of the support elements fails (col. 5, lines 35-43).

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17. Re claim 3, Nelson discloses that the predetermined amount of focused traction pressure is derived from the weight of the person who is in the traction position (col. 1, lines 48-50).

18. Re claims 4-6, 8 and 15, (claims 4 and 15 as best understood) Burton further suggests that the predetermined amount of focused traction pressure is equal to about 40% of the weight of the person (see fig. 1, at 90 degree with full gravity traction, the load on the lumbar spine is about 30 kg with respect to a subject of 70kg); (claim 5) Burton discloses a stand means mounted to a frame including a non-traction receiving surface (upper platform 94) and a partial traction receiving surface (lower platform 93), the harness 32 being effective to produce a partial traction pressure equal to a desired percentage of a full traction pressure when the person steps from the upper platform to the lower platform (fig. 2); (claim 6) the desired percentage is about 20% (fig. 1, at a partial traction position of 40 degree, the load is about 14kg with respect to a subject of 70kg) of the full traction pressure of about 40% weight of the user; and (claim 8) wherein the selected location along the spine of the person includes an inflamed area of the person's back (col. 3, lines 25-35).

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hotas (3,003,498) discloses a spinal traction chair. Anderson (6,217,538) discloses a cervical/upper thoracic relaxer. Brummer (6,123,680) discloses a centrifugal force device and method for treatment of spinal disorders.

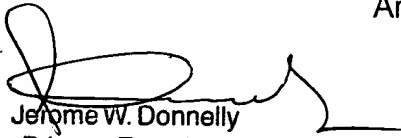
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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday (7am-4pm) & alternate Friday. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Quang D. Thanh
Patent Examiner
Art Unit 3764



qt
May 3, 2002


Jerome W. Donnelly
Primary Examiner